

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MORIANO MILLARE,

Plaintiff,

v.

M. VIRREY, *et al.*,

Defendants.

Case No. 2:20-cv-01297-JAM-JDP (PC)

ORDER THAT DEFENDANTS' MOTION TO  
CLARIFY BE GRANTED

ECF No. 29

Defendants filed a motion to dismiss plaintiff's complaint, arguing that it failed to state claims under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and the First Amendment. ECF No. 21. On January 14, 2022, I recommended that defendants' motion be granted as to plaintiff's RLUIPA claim but denied as to his First Amendment claim. ECF No. 25. My findings and recommendations explained why plaintiff's First Amendment claim survived dismissal, but inadvertently stated that defendants' motion should be granted in its entirety. *Id.* at 6-10. Defendants have moved for clarification. ECF No. 29.

Defendants' motion is granted. As explained in the discussion section of the findings and recommendations, the complaint adequately alleges a First Amendment claim and defendants have not shown that they are entitled to qualified immunity. ECF No. 25 at 6-10. Consequently,

defendants' motion fails to establish a basis for dismissing plaintiff's First Amendment claim.

Accordingly, it is hereby ORDERED that:

1. Defendants' motion for clarification, ECF No. 29, is granted.

2. Defendants are hereby notified that it is my recommendation that their motion to dismiss, ECF No. 21, be granted in part and denied in part as follows:

a. the motion be granted as to plaintiff's RLUIPA, and that claim be dismissed with leave to amend; and

b. the motion be denied as to plaintiff's First Amendment claim.

3. Defendants are reminded that their objections, if any, to the January 14, 2022 findings and recommendations must be filed by no later than February 28, 2022.

IT IS SO ORDERED.

Dated: February 18, 2022

  
JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE